

Commodity Futures Trading Commission

§ 40.3

§ 40.2 Listing products for trading by certification.

To list a new product for trading, to list a product for trading that has become dormant, or to accept for clearing a product (not traded on a designated contract market or a registered derivatives transaction execution facility), a registered entity must file with the Secretary of the Commission at its Washington, D.C., headquarters no later than the close of business of the business day preceding the product's listing or acceptance for clearing, either in electronic or hard-copy form, a copy of the product's rules, including its terms and conditions, or the rules establishing the terms and conditions of products that make them acceptable for clearing, and a certification by the registered entity that the trading product or other instrument, or the clearing of the trading product or other instrument including any rules establishing the terms and conditions of products that make them acceptable for clearing, complies with the Act and rules thereunder.

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* A designated contract market or registered derivatives transaction execution facility may request under section 5c(c)(2) of the Act that the Commission approve new products under the following procedures:

(1) The submitting entity labels the request as "Request for Commission Product Approval";

(2) The request for product approval is for a commodity other than a security future or a security futures product as defined in sections 1a(31) or 1a(32) of the Act, respectively;

(3) The submission complies with the requirements of Appendix A to this part—Guideline No. 1;

(4) The submission includes the fee required under Appendix B to this part.

(b) *Forty-five day review.* All products submitted for Commission approval under this paragraph shall be deemed approved by the Commission forty-five days after receipt by the Commission, or at the conclusion of such extended

period as provided under paragraph (c) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section; and

(2) The submitting entity does not amend the terms or conditions of the product or supplement the request for approval, except as requested by the Commission or for correction of typographical errors, renumbering or other such nonsubstantive revisions, during that period. Any voluntary, substantive amendment by the submitting entity will be treated as a new submission under this section.

(c) *Extension of time.* The Commission may extend the forty-five day review period in paragraph (b) of this section for:

(1) An additional forty-five days, if within the initial forty-five day review period, the Commission notifies the submitting entity that the product raises novel or complex issues that require additional time for review or is of major economic significance. This notification shall briefly describe the nature of the specific issues for which additional time for review is required; or

(2) Such period as the submitting entity so instructs the Commission in writing.

(d) *Notice of non-approval.* The Commission at any time during its review under this section may notify the submitting entity that it will not, or is unable to, approve the product or instrument. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or regulations, including the form or content requirements of paragraph (a) of this section, that the product would violate, appears to violate or the violation of which cannot be ascertained from the submission.

(e) *Effect of non-approval.* (1) Notification to a submitting entity under paragraph (d) of this section of the Commission's refusal to approve a product or instrument does not prejudice the entity from subsequently submitting a revised version of the product or instrument for Commission approval or from submitting the product or instrument as initially proposed pursuant to a supplemented submission.

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(2) Notification to a submitting entity under paragraph (d) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the entity may not truthfully certify under §40.2 that the same, or substantially the same, product does not violate the Act or rules thereunder.

§ 40.4 Amendments to terms or conditions of enumerated agricultural contracts.

(a) Designated contract markets must submit for Commission approval under the procedures of §40.5, prior to its implementation, any rule or rule amendment that, for a delivery month having open interest, would materially change a term or condition as defined in §40.1(f), of a contract for future delivery in an agricultural commodity enumerated in section 1a(4) of the Act, or of an option on such a contract or commodity.

(b) The following rules or rule amendments are not material changes:

(1) Changes in trading hours;

(2) Changes in lists of approved delivery facilities pursuant to previously set standards or criteria;

(3) Changes to terms and conditions of options on futures other than those relating to last trading day, expiration date, option strike price delistings, and speculative position limits;

(4) Reductions in the minimum price fluctuation (or "tick");

(5) Changes required to comply with a binding order of a court of competent jurisdiction, or of a rule, regulation or order of the Commission or of another Federal regulatory authority; and

(6) Any other rule, the text of which has been submitted to the Secretary of the Commission at least ten days prior to its implementation at its Washington, D.C. headquarters and that has been labeled "Non-material Agricultural Rule Change," and with respect to which the Commission has not notified the contract market during that period that the rule appears to require or does require prior approval under this section.

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§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* A registered entity may request pursuant to section 5c(c) of the Act that the Commission approve any rule or proposed rule or rule amendment under the following procedures:

(1) Three copies of each rule or rule amendment submission under this section shall be furnished in hard copy form to the Secretary of the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or electronically in a format specified by the Secretary of the Commission. One copy of each submission shall be transmitted by the registered entity to the regional office of the Commission having local jurisdiction over the registered entity. Each request for approval under this section shall be in the following order and shall:

(i) Label the submission as "Request for Commission rule approval";

(ii) Set forth the text of the rule or proposed rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) Describe the proposed effective date of a proposed rule and any action taken or anticipated to be taken to adopt the proposed rule by the registered entity or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(iv) Explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anti-competitive effects on market participants or others, how the rule fits into the registered entity's framework of self-regulation, and any other information which may be beneficial to the Commission in analyzing the proposed rule. If a proposed rule affects, directly or indirectly, the application of any other rule of the submitting entity, set forth the pertinent text of any such rule and describe the anticipated effect;